88-600

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
October Term, 1988

JAIME RAMOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

1. Whether the sentence imposed upon petitioner, a first offender, constituted cruel and unusual punishment in violation of the Eighth Amendment?

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CASE CITED

United States v. Erasmo Oddo, No. 659, Docket No. 87-1408 dec'd May 2, 1988, U.S. Court of Appeals for the Second Circuit 3

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OPINION IN THE COURT BELOW

The decision of the United States Court of Appeals for the Third Circuit, which affirmed the judgment of conviction without opinion, is set forth in the appendix at pages 1a-2a.

GROUNDS FOR THE JURISDICTION OF THIS COURT

Judgment of conviction was entered in the United States District Court for the District of New Jersey on February 4, 1987. The order of the United States Court of Appeals for the Third Circuit which affirmed the judgment of conviction was entered on August 5, 1988. This Court has jurisdiction to review the judgment of the Circuit Court by Writ of Certiorari pursuant to 28 U.S.C. Section 1254.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves Amendment VIII of the United States Constitution.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF FACTS

This appeal raises for consideration the question of whether the twelve year long sentence meted out to petitioner, a first offender, upon his conviction for one count of conspiracy to distribute and possess with intent to distribute cocaine [21 U.S.C. Sect. 846] and one count of distribution of cocaine [21 U.S.C. Sect. 841(a)(1)] constituted cruel and unusual punishment in light of the gross disparity between the punishment meted out to petitioner and the treatment received by his co-defendant, Thomas Donofrio.

Donofrio was sentenced to a total of five years' incarceration upon his convictions for conspiracy to distribute and possess with intent to distribute cocaine, two counts of distribution of cocaine, two counts of possession of cocaine with intent to distribute it, and six "telephone" counts. Yet, Donofrio was undisputedly the central figure in this drug distribution ring and was implicated by virtually every witness who testified and by virtually each piece of evidence that was introduced during this lengthy trial.

Petitioner and Donofrio came before the same judge for sentencing upon crimes that arose from the same nexus of facts and circumstances.

We incorporate by reference the statement of facts concerning the sentencing proceedings contained in petitioner's brief on appeal to the Third Circuit (3a).

REASONS FOR GRANTING THE WRIT

The grossly disparate sentences imposed here compel the conclusion that petitioner, a native of Columbia, was not punished for his own misdeeds, but was made to answer for all of the wrongs done here. The blame that clearly should have been placed upon Donofrio, an American citizen, who was responsible for distributing cocaine to great numbers of people over a long period of time, was in large part shifted to petitioner. Such a result conveys only the destructive message that the citizens of our country do not have to take responsibility for their own acts. And, the severe and unwarranted punishment imposed upon petitioner is, we submit, the very "cruel and unusual punishment" prohibited by the framers of our Constitution. Cf. *United States v. Erasmo Oddo*, No. 659, Docket No. 87-1408 dec'd May 2, 1988, U.S. Court of Appeals for the Second Circuit.

CONCLUSION

For the foregoing reasons the petition should be granted.

Respectfully submitted,

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APPENDIX A—ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 87-5124

UNITED STATES OF AMERICA,

v.

THOMAS DONOFRIO et al.

JAMIE RAMOS,

Appellant.

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Criminal No. 86-00177-02)
District Judge: Robert E. Cowen

Submitted Under Third Circuit Rule 12(6)
July 11, 1988

Before: SLOVITER, SCIRICA, and WEIS,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellant, to wit:

1. The Government failed to prove beyond a reasonable doubt that appellant distributed cocaine on March 3rd where no exchange of packages was observed, no cocaine was ever seized or tested, and the preceding conversations, as interpreted by the Government's expert on drug vernacular, demonstrated that the parties reached no agreement to sell or exchange cocaine at that time;

2. Appellant was denied his due process right to a fair trial when he was forced to defend against his alleged possession of $150,000 in cash although that money was

not found in his possession and was never satisfactorily connected to him;

3. The admission of the hearsay statement of appellant's non-testifying co-defendant, Donofrio, who said that he would not live if he talked about the people he dealt with violated appellant's Sixth Amendment right to confront the witnesses against him and severely undermined his right to a fair trial; and

4. The sentence imposed upon appellant did not satisfy even the appearance of justice in light of the gross disparity between the punishment meted out to appellant and the treatment received by his co-defendant, Donofrio,

It is ORDERED and ADJUDGED that the judgment of the district court be and is hereby affirmed.

By the Court,

s/ _____
Circuit Judge

Attest:
s/ Sally Mrovs
Sally Mrovs, Clerk
Dated: JULY 14 1988

Certified as a true copy and issued in lieu
of a formal mandate on August 5, 1988.

Test: s/ M. Elizabeth Ferguson
Chief Deputy Clerk, United States Court of Appeals,
for the Third Circuit

APPENDIX B—THE SENTENCES

Appellant was sentenced to a total of 12 years' incarceration (Ramos Sentencing Minutes, p. 19; A.208). This sentence was more than twice the length of the 5 year overall incarcertory sentence imposed upon Donofrio, whom the Government urged was the "kingpin" of the drug distribution ring (Donofrio Sentencing Minutes, p. 29; A.212).

Donofrio, who was implicated in the conspiracy by virtually every witness to testify and every item of evidence admitted received a sentence of five years upon the conspiracy count (Donofrio Sentencing Minutes, p. 40; A: 213).

Appellant received a sentence of eight years for conspiracy (Ramos Sentencing Minutes p. 19; A. 208).

Donofrio received a sentence of *four years* to run *concurrently* with the five year sentence imposed upon the conspiracy count for *two counts of possession with intent to distribute, two counts of distribution and six "telephone" counts* (Donofrio Sentencing Minutes, p. 41; A.214).

Appellant received a sentence of four years to run *consecutively* to the eight year sentence he received upon the conspiracy count *for a total of one conviction for distribution* (Ramos Sentencing Minutes, p. 19; A.208). A special parole term of three years was imposed upon Donofrio (Donofrio, Sentencing Minutes, p. 41; A.214), while a special parole term of Five years was imposed upon appellant (Ramos Sentencing Minutes, p. 19; A.208).

The court stated that appellant was "supplying the kingpin [Donofrio]" (Ramos Sentencing Minutes page 8: A 197) but ignored the fact that appellant was convicted of but one distribution of cocaine. The court later said that "We want to punish this man but we also want to make him serve as a deterrent to others" (Ramos Sentencing minutes p. 10; A. 199). The court, however, was most solicitous of Donofrio.

The court castigated appellant for not cooperating with the government while it excused and condoned Donofrio's refusal to cooperate with the government.

Regarding appellant the court said:

> Well, if he has distributed, there is nothing here that would show me that, for instance, he has cooperated with the Government, for which I would give him high marks for (Ramos Sentencing Minutes, pp. 11-12; A.200).

When counsel explained that such cooperation might have cost the lives of appellant's family in Columbia, the court retorted:

> He should have thought about that before he started being a drug dealer, if he gets caught, he is in jail for a long time. If he wants to cooperate—(Ramos Sentencing Minutes, p. 12; A.201).

In contrast, the court explained and excused Donofrio's failure to cooperate with the Government. Yet, Donofrio's reason for not testifying was identical to that of appellant's—the protection of someone he loved:

> THE COURT: Well, could you realistically though expect someone who is romantically or emotionally involved with a woman to testify against the co-defendant under those circumstances?

The court reiterated:

> THE COURT: Well, no, no, any testimony, can you realistically, as a human factor, I am saying, expect a defendant in a criminal matter to testify against a woman he is living with? (Donofrio Sentencing Minutes, p. 38; A. 215).

Notwithstanding that four witnesses testified to the fact that appellant had a legitimate, well established jewelry business, the court opined that "there was no documentation of that . . . the man never filed a tax return" (Ramos Sentencing Minutes, p. 6; A. 195).

When counsel pointed out that appellant had received a 10 in his quality ratings, which is the highest rating possible the court observed that he had a 10 salient factor (Ramos Sentencing Minutes p. 13-14; A202-203).

Apparently referring to the $150,000 that was never shown to have belonged to appellant and that appellant renounced with the court's approval, the court observed: "Your client made more money than any doctor or lawyer I know just selling drugs" (Ramos Sentencing Minutes, p. 11; A. 200). The court made no comment whatsoever when the Government urged that Donofrio was in this business to make a profit and referred to the $89,000 Donofrio actually possessed (Donofrio Sentencing Minutes, pp. 30-32; A215a-216).